

ASARO & KEAGY
ATTORNEYS AT LAW
304 KALMA STREET
SAN DIEGO, CALIFORNIA 92101
338-3881

FILED
BUSINESS DIVISION

Nov 28 3 33 PM '78

ROBERT E. SCHWALT
CLERK, SAN DIEGO CO.
CALIFORNIA

Attorneys for Plaintiff and Cross-
Defendants

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

GREMLIN INDUSTRIES, a
Delaware Corporation,

Plaintiff,

vs.

CIRCLE INTERNATIONAL CO.
INC., etc. et al.,

Defendants.

CASE NO. 416704

CIRCLE INTERNATIONAL CO.
INC., etc. et al.,

Cross-Complainants,

vs.

GREMLIN INDUSTRIES, a
Delaware Corporation, and
DOES 1 through 10,
inclusive,

Cross-Defendants.

ANSWER TO CROSS-
COMPLAINT FOR DAMAGES

Cross-Defendant GREMLIN INDUSTRIES, a Delaware Corporation,
for itself and no other Cross-Defendant, and severing itself
from all other Cross-Defendants herein, in response to the
Cross-Complaint on file herein, admits, denies, and alleges
as follows:

////

////

ANSWER TO FIRST CAUSE OF ACTION

1. Answering Paragraph 1, Cross-Defendant denies, generally and specifically, each and every allegation contained therein.

2. Answering Paragraph 2, Cross-Defendant lacks sufficient information or belief to enable it to answer the allegations therein, and on that basis, Cross-Defendant denies generally and specifically each and every allegation contained therein.

3. Answering Paragraph 3, Cross-Defendant admits each and every allegation contained therein.

4. Answering Paragraph 4, Cross-Defendant admits each and every allegation contained therein.

5. Answering Paragraph 5, Cross-Defendant lacks sufficient information and belief to enable it to answer the allegations contained therein, and on that basis, Cross-Defendant denies each and every allegation contained therein.

6. Answering Paragraphs 6, 7, and 8, Cross-Defendant denies, generally and specifically, each and every allegation contained therein.

7. Answering Paragraph 9, Cross-Defendant denies, generally and specifically, each and every allegation contained therein. Cross-Defendant further denies that Cross-Complainant CIRCLE INTERNATIONAL was damaged in a sum in excess of \$100,000.00, or in any other sum or sums whatsoever.

8. Answering Paragraph 10, Cross-Defendant denies, generally and specifically, each and every allegation contained therein.

ANSWER TO SECOND CAUSE OF ACTION

9. Answering Paragraph 11, Cross-Defendant repeats and realleges its answers to Paragraphs 1 through 8, inclusive,

ASARO & KEAGY
ATTORNEYS AT LAW
304 KALMA STREET
SAN DIEGO, CALIFORNIA 92101
212-3861

1 to the First Cause of Action of the Cross-Complaint on file
2 herein, and by this reference incorporates the same herein as
3 though set forth in full.

4 10. Answering Paragraph 12, 13, 14, and 15, Cross-
5 Defendant denies generally and specifically each and every
6 allegation contained therein.

7 11. Answering Paragraph 16, Cross-Defendant denies generally,
8 and specifically each and every allegation contained therein.
9 Cross-Defendant further denies that Cross-Complainant has been
10 damaged in excess of \$100,000.00, or in any other sum or sums
11 whatsoever.

12 ANSWER TO THIRD CAUSE OF ACTION

13 12. Answering Paragraph 17, Cross-Defendant repeats and
14 realleges its answers to Paragraphs 1 through 8, inclusive,
15 of its Answer to the First Cause of Action to the Cross-Complaint
16 on file herein, and by this reference incorporates the same herein
17 as though set forth in full.

18 13. Answering Paragraph 18, Cross-Defendant admits that
19 it sold to Cross-Complainant CIRCLE INTERNATIONAL, certain
20 electronic games and/or parts. Except as expressly admitted
21 herein, Cross-Defendant lacks sufficient information or belief
22 to enable it to answer the other allegations contained therein,
23 and on that basis, Cross-Defendant denies generally and specifically,
24 each and every other allegation contained therein.

25 14. Answering Paragraphs 19, 20, 21, 22, and 23, Cross-
26 Defendant denies generally and specifically, each and every
27 allegation contained therein.

28 ////

////

ASARO & NEAGY
ATTORNEYS AT LAW
100 CALIFORNIA
300 CALIFORNIA
SAN DIEGO, CALIFORNIA 92101
239-3441

15. Answering Paragraph 24, Cross-Defendant denies, generally and specifically, each and every allegation contained therein. Cross-Defendant further specifically denies that Cross-Complainant CIRCLE INTERNATIONAL was damaged in a sum in excess of \$100,000.00, or any other sum or sums whatsoever.

ANSWER TO FOURTH CAUSE OF ACTION

16. Answering Paragraph 25, Cross-Defendant repeats and realleges its answers to Paragraphs 1 through 9, inclusive, of its answer to the First Cause of Action to the Cross-Complaint on file herein, and by this reference incorporates the same herein as though fully set forth.

17. Answering Paragraph 26, Cross-Defendant lacks sufficient information or belief to enable it to answer the allegations contained therein, and based on such lack of information or belief, Cross-Defendant denies, generally and specifically, each and every allegation contained therein.

18. Answering Paragraph 27, Cross-Defendant admits that Cross-Complainant CIRCLE INTERNATIONAL, at all times relevant herein, was and is a distributor of products and/or parts manufactured by Cross-Defendant. Except as expressly admitted herein, Cross-Defendant denies, generally and specifically, each and every other allegation contained therein.

19. Answering Paragraphs 28, 29, and 30, Cross-Defendant denies, generally and specifically, each and every allegation contained therein.

20. Answering Paragraph 31, Cross-Defendant denies, generally and specifically, each and every allegation contained therein. Cross-Defendant further specifically denies that

1 Cross-Complainant CIRCLE INTERNATIONAL was damaged in a sum
2 exceeding \$100,000.00, or in any other sum or sums whatsoever.

3 AS AND FOR SEPARATE AND DISTINCT AFFIRMATIVE DEFENSES,
4 Cross-Defendant alleges as follows:

5 FIRST AFFIRMATIVE DEFENSE

6 That the Cross-Complaint on file herein, as well as each
7 cause of action purportedly alleged therein, fails to state
8 facts sufficient to constitute a cause of action against this
9 answering Defendant.

10 SECOND AFFIRMATIVE DEFENSE

11 Cross-Complainant's alleged claims herein are barred by
12 the applicable statute of frauds.

13 THIRD AFFIRMATIVE DEFENSE

14 Cross-Complainant's alleged claims are barred by the
15 principle of laches.

16 FOURTH AFFIRMATIVE DEFENSE

17 Cross-Complainant's alleged claims are barred by failure
18 of conditions precedent.

19 FIFTH AFFIRMATIVE DEFENSE

20 Cross-Complainant's alleged claims are barred by the principle
21 of estoppel.

22 SIXTH AFFIRMATIVE DEFENSE

23 Cross-Complainant's claims are barred by the principle
24 of waiver in that said goods were accepted by Cross-Complainant
25 at his place of business without protest or the sending of a
26 Notice of Non-Conforming Goods to the Cross-Defendant.

27 SEVENTH AFFIRMATIVE DEFENSE

28 Cross-Complainant accepted all of the goods sold to Cross-

1 Complainant by failure of Cross-Defendant to make an effective
2 rejection after said Cross-Complainant had a reasonable oppor-
3 tunity to inspect said goods in accordance with the Uniform
4 Commercial Code.

5 EIGHTH AFFIRMATIVE DEFENSE

6 Cross-Complainant's claims are barred by virtue of its
7 failure to notify Cross-Defendant within a reasonable time,
8 of non-conformance of the goods delivered to Cross-Complainant
9 by Cross-Defendant in accordance with the Uniform Commercial
10 Code.

11 NINTH AFFIRMATIVE DEFENSE

12 Cross-Defendant alleges that at said times described
13 in the Cross-Complaint, Cross-Complainant did not use the goods
14 in accordance with Cross-Defendant's instructions; consequently,
15 Cross-Defendant is not liable to Cross-Complainant for Cross-
16 Complainant's alleged injuries.

17 TENTH AFFIRMATIVE DEFENSE

18 Cross-Defendant alleges that at the time Cross-Complainant
19 purchased said electronic games and/or parts from Cross-Defendant
20 as alleged in the Cross-Complaint, Cross-Complainant did not
21 inform Cross-Defendant that it desired to use said electronic
22 games and/or parts for the particular purpose alleged in the
23 Cross-Complaint, or for any other particular purpose apart
24 from the ordinary purposes for which said electronic games
25 and/or parts are designated to be used, and Cross-Defendant had
26 no knowledge of Cross-Complainant's alleged particular purposes,
27 and reasonably and justifiably assumed that Cross-Complainant
28 desired to use said electronic games and/or parts for said

1 ordinary purpose for which they were designed, and hence, Cross-
2 Defendant made no implied warranty of fitness for a particular
3 purpose as to said electronic games and/or parts to Cross-
4 Complainant, and Cross-Defendant is not liable to Cross-Complain-
5 ant for the alleged breach thereof.

6 ELEVENTH AFFIRMATIVE DEFENSE

7 Cross-Defendant alleges that Cross-Complainant is highly
8 experienced in the design, manufacture, marketing, and service
9 of coin-operated games, and hence possesses a high degree of
10 skill and judgment in selecting and ascertaining the quantities
11 of various coin-operated games; at the time the parties entered
12 into said contract, Cross-Defendant provided Cross-Complainant
13 with ample opportunity to inspect the electronic games which
14 were shipped to Cross-Complainant, and Cross-Complainant in
15 entering into said contract with Cross-Defendant and in making
16 said purchase thereunder, relied on its own skill and judgment
17 and that as a consequence, Cross-Defendant made no implied
18 warranty of fitness for a particular purpose as to said electronic
19 games to Cross-Complainant, and is not liable to Cross-Complainant
20 for an alleged breach thereof.

21 TWELFTH AFFIRMATIVE DEFENSE

22 Cross-Defendant alleges that after acceptance of the goods,
23 as alleged in Cross-Complainant's Cross-Complaint herein, Cross-
24 Complainant did not then, nor has it ever prior to the service
25 of the Cross-Complaint on Cross-Defendant, given Cross-Defendant
26 notice of the alleged breach of the warranty of merchantability
27 set forth in the Cross-Complaint.

28 ///

///

ASARO & KEAGY
ATTORNEYS AT LAW
804 KALAMAZOO STREET
SAN DIEGO, CALIFORNIA 92101
338-3881

THIRTEENTH AFFIRMATIVE DEFENSE

Cross-Defendant alleges that after acceptance of the goods, as alleged in Cross-Complainant's Cross-Complaint herein, Cross-Complainant did not then, nor has it ever prior to the service of the Cross-Complaint on Cross-Defendant, given Cross-Defendant notice of the alleged breach of warranty of fitness for a particular purpose set forth in the Cross-Complaint.

WHEREFORE, Cross-Defendant prays for judgment against Cross-Complainant as follows:

1. That the Cross-Complaint on file herein be dismissed;
2. For reasonable attorney's fees;
3. For costs of suit incurred herein; and
4. For such other and further relief as the Court deems just and proper.

DATED: November 28, 1978

ASARO & KEAGY

BY:

Patrick J. Olmstead
PATRICK J. OLNSTEAD
Attorneys for Cross-Defendant
CREMLIN INDUSTRIES

CERTIFICATION UNDER PENALTY OF PERJURY
(C.C.P. 446, 2015.5)

I am ~~was~~ one of the officers of GREMLIN INDUSTRIES

in the above entitled action; I have read the foregoing

ANSWER TO CROSS-COMPLAINT FOR DAMAGES

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed at San Diego, CA.

Date 11-28-79

Joe P. Chelore
(Signature)